

Tracking Statutory Reauthorizations: Creating a New Metric for Legislative Productivity

E. Scott Adler
Stefani Langehennig
University of Colorado Boulder

September 3, 2016*

Abstract

The conventional wisdom on the contemporary Congress is that it is an unproductive lawmaking body plagued by partisan conflict and gridlock. However, a rigorous metric for measuring policy-making success and failure is lacking. This paper introduces a basic benchmark to gauge the productivity of Congress using expiring provisions from all public laws. We investigate existing measures of congressional performance and discuss why a new metric is needed to gauge legislative success. We then examine various data sources that are available for creating this new measure, highlighting the advantages and disadvantages of each. Finally, we discuss our data collection plan and conclude with a preview of next steps in analyzing Congress's governing capacity using this new metric.

*Prepared for delivery at the 2016 annual meeting of the American Political Science Association, September 1-4, Philadelphia, PA. We would like to thank the Hewlett Foundation's Madison Initiative and Daniel Stid for their support on this research project.

Introduction

The conventional view of the contemporary Congress is that it is an ineffective lawmaking body plagued by partisan conflict and gridlock. Congress is regularly seen as governing institution that is incapable of fulfilling its responsibilities because it cannot pass the laws required for it to do so. Is this correct? Though we are bombarded with anecdotes of conflict among lawmakers or the failure to move bills forward, such as this summer's bill to fund the government's efforts to combat the Zika virus, should we say that the legislature is plagued by dysfunction? If we want to understand the degree to which Congress is "broken" we need an appropriate metric. Too often, scholars, journalists, and other observers rely on simplistic and sometimes misleading indicators of congressional productivity and governance that bolster an expected conclusion of dysfunction. Raw measures of legislative activity (number of laws passed, days in session, etc.) are usually inaccurate depictions of substantive action and governing. What are needed are more nuanced and precise measures of lawmaking and productivity that can provide greater information as to the challenges and possibilities of a complex legislature. Moreover, they do not really provide a baseline by which we can gauge the performance as a governing body.

In order to truly understand Congress's ability to fulfill its lawmaking responsibilities, we need a gauge of its success in accomplishing its primary task: revising and improving the hundreds of existing programs and laws. A measure of this type not only provides an estimate of overall legislative performance, but also permits a more nuanced perspective on governing within individual policy areas. If we want to understand the process of legislative deliberation and compromise, these "compulsory" statutory items are where this is most likely occur. Ultimately, such research will offer a significant advance over current work on congressional productivity through its comprehensiveness and precision.

This paper outlines our research for a long-term project that we are just getting off the ground. Here we lay out a new measure for congressional productivity based on the Congress's own pre-prescribed workload. First, we investigate existing measures of congres-

sional performance and discuss why a new metric is needed to gauge legislative success. Next, we provide an overview of temporary legislation and why expiring provisions in legislation are a better way to understand legislative performance. We then examine various data sources that are available for creating this new measure, highlighting the advantages and disadvantages of each. Finally, we discuss our data collection plan and conclude with a preview of the next steps in analyzing Congress's governing capacity using this new metric.

Goal of the Research

As accounts of Congress's persistent and expanding dysfunction have grown ubiquitous in recent years, we need to ask: how bad is it? And, if it is so bad, where are the particularly problematic areas and what is it we can do about it? Our aim is to measure Congress's governing capacity and output by analyzing the degree to which it is meeting its own preordained agenda. In particular, we examine the wide array of programs under temporary authorizations - those programs for which funding or even their statutory existence is dependent upon Congress renewing and updating - to gauge the degree to which Congress is meeting its own legislative obligations.

Our aim, therefore, is to examine patterns in the use and renewal of expiring provisions in federal statutes over time. After collecting all short-term or expiring provisions in all statutes enacted by Congress since 1994 - a data collection process we outline below - we examine a number of different aspects of congressional performance.

Specifically, we will eventually explore a variety of questions regarding the capacity of Congress to govern: To start: are members of Congress increasingly likely to incorporate expiring provisions as a way to strike compromises in a time of polarized parties? Are some issue areas - perhaps those that are ideologically grounded - more or less reliant on the utilization of sunset provisions, and does that change over time? Are programs being reauthorized for shorter or longer periods, and is this related to the contentiousness of the subject matter or the ability to continually extract rents from policy stakeholders?

From there we can proceed to a more detailed examination of variation in congressional productivity by policy area. Along the way we will reveal what happens to programs and agencies that do not get formal reauthorizations - are they sustained through waivers in appropriations legislation or do they simply disappear?

This leads us to the most important question: What conditions best predict Congress's successes and failures in meeting its legislative obligations? Since we will eventually be able to tie each law to existing details on institutional arrangements and political conditions, we can explore the influences of both internal factors (e.g., partisan agendas, committee leadership, ideological composition) and external factors (e.g., issue salience, presidential priorities, election outcomes, interest group pressures) in congressional productivity and governance.

Existing Measures of Congressional Performance

Scholars have developed some innovative and meaningful indicators of lawmaking activity that are enhancing our discussion of congressional performance. Mayhew's lists of historic statutes serve as a valuable synopsis of the major legislative actions taken each term (Mayhew 2005). Moreover, indicators of "gridlock" provide an important view of the policy matters being discussed by political elites. Binder's path-breaking work in this area has promoted the concept of "legislative capacity," while advocating for a coherent denominator in considering policy demand (Binder 2003; Binder 2014).

Yet, extant measures only reveal part of the productivity equation. There is an entirely different world of lawmaking and governance that is missed by many existing indicators of productivity. To wit, the vast majority of substantive lawmaking activity that occurs in a congressional term involves the renewal and updating of expiring laws, programs, and agencies. This is the agenda that Congress sets for itself in advance, and in recent years, it has largely struggled to complete. Expiring provisions in laws sometimes occur in small form (singular expirations such as the funding mechanism for Superfund clean ups), but are more

often part of sizable statutes that are essential to governmental performance (e.g., the Farm bill, the Highway bill, the Department of Defense reauthorization, the Higher Education Act, Coast Guard reauthorization, Intelligence reauthorization, PATRIOT Act). Congress's discretionary authority in a wide array of federal policy is comprised primarily of these short-term authorizations.

What are Short-Term Authorizations?

Among the most common legislation considered by Congress are authorizations and appropriations (Schick 1995; Tollestrup & Yeh 2014). Authorizing legislation provides the specific framework for federal programs and agencies and their respective jurisdictions. Appropriations legislation provides for the funding of programs and agencies previously authorized by other legislation. The authorization/appropriations process is intended to be two-step. First, a program or agency is enacted or continued via an authorization. An authorization is a statutory provision that outlines the government's authority to act. Authorizations institute or renew federal programs, agencies, policies and other various projects. Moreover, they also create policies that restrict organizational and managerial business. Finally, authorizations can also authorize congressional action to provide successive appropriations. It is important to note, however, that an authorization standing alone does not provide funding for the programs and agencies it authorizes. The second step involves appropriations, which are enacted to provide funds for the programs or agencies authorized in the first step. An appropriation is a statutory provision that stipulates budget authority, thereby allowing programs and agencies to acquire responsibilities and make payments for these responsibilities for specified purposes and time periods (Tollestrup & Yeh 2014).

In most cases for the federal government, authorizations are only enacted for a limited period of time - these can range from a year to as long as a quarter-century - but most span 3-6 years. When temporary legislation expires, appropriations or the agency in charge of implementing a program are no longer officially authorized. According to congressional rules, should an authorization expire, funds are not to be appropriated and agencies should cease

their operations.

Authorizations can be both short-term and permanent. Historically, short-term authorizations were common for both pragmatic and institutional reasons. Protecting against majorities who might implement imprudent policies (Gerson 2007) and giving committees more jurisdictional control (Hall 2004) resulted in legislators transitioning from permanent to temporary legislation. As Gerson (2007) explains, Alexander Hamilton, an advocate of recurring authorizations, argued in the *Federalist Papers* that such legislation serves as a multi-stage legislative safeguard that allows different groups to “sound alarms” on policies they deemed unfit. Hamilton recognized that short-term authorizations divergent to the public’s interests are harder to sustain over time as compared to permanent legislation created by a particular coalition at a particular time. In contemporary politics, short-term authorizations fundamentally differ from their permanent counterparts for both political and policy reasons. Politically, short-term authorizations give the legislature agenda control and decision-making authority between and among present and future Congresses; current legislators set the agenda and transfer the costs associated with making decisions when they use short term authorizations, while simultaneously forcing future Congresses to revisit and reenact policies (Gerson 2007, 266). Short-term authorizations also provide predictable windows when policy change can occur (Kingdon 1995; Hall 2004). As such, recurring legislation opens policy windows that serve as a mechanism for updating information, which results in policies that are thought to be well informed and adjusted to changing political climates. Permanent legislation lacks the informational advantages inherent to short-term policies simply because legislators are not revisiting and updating policies as necessary.

Short-term Authorizations and Legislative Success

Thus, authorization deadlines in short-term legislation provide legislators with the political and policymaking obligation to revisit policies as they recur. This presumably forces Congress to address those pieces of legislation that will expire, giving them a degree of control over the policymaking process. Congress’s workload has increased and changes

have occurred in the political and social environment, which has resulted in lawmaking that hardly resembles the “textbook” process (Sinclair 1997). The legislative bargaining process has become more complex and partisan and temporary legislation is a means to control the legislative agenda in order to achieve stable policies that endure the entire length of the policy (Hall 2004). Hall (2004) argues that such a system results in the strategic timing of policy change. By this account, legislators can strategically plan when they will take up an issue, which essentially serves as a gatekeeping mechanism (Hall 2004, 3).

Adler and Wilkerson (2012) build on the strategic uses of temporary legislation by way of a problem-solving perspective. Whereas permanent laws would result in politically difficult and more costly lawmaking, limiting the duration of legislation via short-term authorizations allows for lowering the transactions costs associated with developing legislation (Adler & Wilkerson 2012, 74). Moreover, they argue that temporary legislation serves as a predictor of issue attention and policy change in Congress.

In addition to these perspectives, expiring provisions are also a measure of legislative success. Building expirations into laws provides legislators with the opportunity to revisit policies as changes occur in the political and social environment, as well as craft legislation favorable to their own political goals. The legislative agenda is comprised of different issues that demand various degrees of attention by members of Congress. In addition to thinking about such goals as credit claiming, creating good policy, or being reelected (Fenno 1973; Mayhew 1974), short-term authorizations are about keeping the government functioning. Temporary legislation is a predictable way by which government can engage in successful legislating across a very wide array of issue areas. Legislators are concerned with creating successful policy that meshes with their own personal goals and is also feasible within the various influences surrounding them. Pressures internal to the government, such as agency oversight and accountability and inter-branch dynamics, have the potential to influence the number of expirations in policy areas. Further, pressures external to the government such as the public’s mood and elite and voter salience affect the degree to which legislators can

effectively use expiring provisions to achieve their policy goals.

Extracting Expiring Provisions

Despite the centrality of authorizing legislation to Congress's primary responsibility of governing, relatively little systematic research has explored the patterns in authorizations over time or across issue areas. Two notable exceptions are Curry (2015) and Adler and Wilkerson (2012), who examine various trends in the authorization process across specific policy areas by undertaking the monumental task of tracking major reauthorizations. Rather than focusing on number of bills passed or "landmark" legislation, these authors use expirations to study policy change. However, as will become evident below, this is not an easy enterprise. This scarcity of research is unsurprising since there is no readily available database of authorizing legislation, and constructing such a data set is not a trivial task. Yet, short-term authorizing legislation by their recurring nature provide a critically important metric to gauge legislative productivity and output - a dominator or baseline of expected lawmaking. By accounting for all the statutory provisions with sunset dates that Congress has constructed for itself, we are able to measure the pace that lawmakers are able to meet governing obligations.

The trick is to pull out expiring provisions. To get a sense of the enormity of this task we conducted a preliminary count of expiring provisions using the Congressional Research Service's (CRS) legislative summaries that appear on congress.gov. Starting with a sample of public laws drawn from reports provided by the Congressional Budget Office (CBO) reports on expiring authorizations (more on this report below), we identified a list of key word combinations that routinely appear in laws that are set to expire. We tested these word combinations on the *congress.gov* search engine to make sure the search yielded results that matched the CBO reports. The searches yielded a match to the CBO reports approximately 95 percent of the time. There is no systematic way in which expiring provisions are written into statutory language. Some laws identified contain no expiring provisions, while many

laws contain multiple expiring provisions. The initial data collection yielded approximately 5,800 expiring provisions in the summaries of more than 8,000 public laws from 1973 through 2011 (the 93rd through the 111th Congresses). Since every law is already coded for policy content using Policy Agendas topic codes, we are also able to account for expirations by policy area.¹

The figures below illustrate the distribution of the count of expiring provisions by Congress and major topic area. As evidenced below, the trend in the average number of expiring provisions in public laws has decreased somewhat over time. Figure 1 shows that the inclusion of expiring provisions in legislation reached its peak in the 102nd Congress (1991-1992) and then hit its nadir during the 108th Congress (2003-2004). Contemporary congresses have hovered just below an average of ten expiring provisions in each issue area for each Congress since the 107th (2001-2002). Figure 2 shows the distribution of the dependent variable by major issue area. The average number of expiring provisions over the course of the time analyzed varies tremendously by issue area. For example, legislation in health, education, defense, and lands has the most expiring provisions in public laws, whereas civil rights, immigration, and legislation related to space have the fewest.

[Figure 1 about here.]

[Figure 2 about here.]

In accounting for the nearly 6,000 expiring provisions in laws just for the period between 1973 and 2011 - a number that we will contend is a severe undercount - there are various choices for identifying expiring provisions in laws: Congressional Budget Office

¹We needed to confirm that we did not pick up stopgap legislation that would inflate the number of expiring provisions in the data set. Stopgap measures are very short-term extensions - a few weeks to a few months - that keep programs running when an expiration is imminent because legislators cannot reach an agreement that would renew the law. An example is the Federal Aviation Administration (FAA) reauthorization, set to expire March 31, 2016, that was scrapped in February 2016 prior to its expiration and replaced with a stopgap bill due to disagreement regarding the plan to privatize the nations air traffic control system. We used CQ Almanac's advanced search engine to identify pieces of legislation that are stopgap measures. We crosschecked approximately fifty of the laws yielded by CQ's results with the laws in the dataset and only found one instance where a stopgap occurs. As such, we were fairly confident these were not a systematic problem in the data.

reports on unauthorized appropriations and expiring authorizations, Congressional Research Service summaries of enacted legislation, *Statutes at Large*, and the *United States Code*.

Below we offer a description of each of these sources of information about expiring provisions in statutes, along with a recounting of the pros and cons of using them to create a comprehensive dataset of short-term authorizations. Ultimately, we have chosen - for the moment - to use the *U.S. Code* as our source of information on expiring provisions in law. To illustrate the advantages and disadvantages of these primary data sources for our purposes, we detail the information that each document provides for a specific set of provisions in the FAA reauthorization of 2003. The law is commonly referred to as “Vision 100 - Century of Aviation Reauthorization Act” (P.L. 108-176). In particular, we report how each source handles the four-year reauthorization (2004-7) of Airport Planning and Development and Noise Compatibility Planning and Programs.

CBO Report on Unauthorized Appropriations and Expiring Provisions

The Congressional Budget Office (CBO) reports annually what programs and appropriation authorizations will expire and have expired. The CBO sends to Congress each January a list of expirations set to expire or that have already expired in order to avoid delays in appropriating money. This report is statutorily required by section 202 (e)(3) of the Congressional Budget and Impoundment Control Act of 1974 (i.e., the Congressional Budget Act). It was developed to prompt Congress in the early months of a congressional session to adopt authorizations before appropriations bills can be deliberated.

The report has on occasion been used to account for all expiring provisions. For example, Kevin Kosar uses the CBO reports to show that Congress has been funding programs and agencies like the Federal Election Commission and State Department for years, despite not having an authorization in place before spending for these things occur.² In an attempt to identify all expiring authorizations spanning 2007-2012, Curry (2015) reorganizes the CBO lists of expiring programs and agencies into a coherent dataset to help explain

²<http://www.weeklystandard.com/inappropriate-appropriations/article/2001273>

political maneuvering among members of Congress.

While this document is informative, it has a glaring problem for our purposes: the CBO reports severely underestimate the number and description of expirations found in laws. The figure below illustrates this point. The January 2008 CBO report³ would be the first to indicate the provisions of the 2003 FAA reauthorization that are set to expire at the end of that fiscal year. One obvious advantage of the CBO reports is the easily discernable listing of expiring provisions with the date of expiration, and dollar amount last authorized to be appropriated. However, the report of expirations for this FAA reauthorization not only fails to mention the particular expiring provision of interest - airport planning and development and noise compatibility and programs - it also appears to leave many of the details out about a wide array of programs that are found in the original legislation. This listing of expiring provisions in P.L. 108-176 seems to be a grab-bag of a small number of the expiring provisions of the act.

[Figure 3 about here.]

The example used above is just one illustration of the shortcomings in the details of expirations contained in the annual CBO report. Since identifying the specifics of public laws and whether an expiration in a law is renewed is highly dependent on how precise the details in the initial search of provisions is, we do not feel the CBO reports would be sufficient for our purposes and might result in a severe count of expiring provisions.

CRS Summaries of Enacted Legislation (www.congress.gov)

Another resource available for tracking authorizations is the legislative summaries developed by the Congressional Research Service (CRS) on the *congress.gov* website. Legal analysts from the CRS of the Library of Congress provide a short summary whenever a bill or resolution is introduced in the House or the Senate. These summaries are meant to “objectively describe the measure’s significant provisions.”⁴ Whenever there is action on the

³https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/house_version.pdf

⁴https://www.congress.gov/help/legislative-glossary/#glossary_billsummary

measure, such as the bill being reported out of committee, CRS legal analysts expand on the summary by providing details on how the changes affect programs and the current law. Each summary provides the date and version of the measure, as well as whether there have been amendments to it. A final summary is provided when the measure is enacted into law.

Figure 4 below contains an example of the information provided by the CRS summary for the same legislative provision above. As demonstrated by this paragraph, much is lost in the summaries. Foremost there is relatively little information provided by the summary: no dollar amounts, nor years associated with the dollar amounts authorized to be appropriated for the program. The specific section (101) in the legislation is condensed to a statement that simply states a general reauthorization of the section. What is particularly troublesome is that many of the programs and agencies outlined in other sources (*Statutes at Large* and *U.S. Code*) are condensed into one sentence, as is illustrated by this example, which does not explicitly mention the Airport Planning and Development and Noise Compatibility Planning and Programs.

[Figure 4 about here.]

Source of the Full Text of Legislation

Given the deficiencies of the two sources of summary information about legislation, we turn to other documents that include detailed information about statutes enacted by Congress: the *Statutes at Large* and the *United States Code*.

*Statutes at Large*⁵

The *Statutes at Large* is a permanent, chronological collection of all laws passed by Congress. The Office of the Federal Register (OFR) publishes the Statutes enacted in each congressional session. This is the official source of law, and every public law enacted by Congress - public and private - is included in the *Statutes at Large*. Laws that are newly

⁵See <https://www.fas.org/sgp/crs/misc/RL30812.pdf> for a detailed treatment of what federal statutes are.

enacted are produced as “slip laws” that are gathered and revised as necessary. The slip laws are adapted into a cumulative format, referred to as the *Statutes at Large*. Most statutes do not introduce new programs, but instead dismantle or amend earlier versions of laws.

The example in Figure 5 shows what legislation looks like once passed and included in the *Statutes*. The content is detail rich and often times very long - the Aviation 100 – Century of Aviation Reauthorization Act is over 100 pages in length. While the *Statutes* are beneficial for understanding the minutiae of public laws, they are not necessarily research-friendly. Language in the *Statutes* is not particularly systematic, which makes the task of tracing reauthorizations extremely difficult. Here we see the provision of interest in the 2003 FAA reauthorization.⁶ This specific provision is authorizing programs for the airport and development and noise compatibility planning. The language reads as follows:

[Figure 5 about here.]

The vast majority of expiring provisions are authorizations of appropriations, much like the example shown above. These provisions are oftentimes buried in the middle of a statute and are not all written in an identical format (see an example below in Figure 6). This makes our task of identifying such provisions much more difficult, as we do not have a systematic way in which we can ascertain them from the *Statutes*. For the purposes of parsing the data, this is very problematic. Below is an example of a provision that we would need to pull from the text of the legislation, but is much different than what we showed before:

[Figure 6 about here.]

*United States Code*⁷

⁶Full text of the legislation is available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg2490.pdf>

⁷See Whisner (2009), Tress (2010), and Foley (2012) for full explanations of the history, intricacies, and format of the *United States Code*.

A seemingly more efficient compliment to the *Statutes at Large* for tracking legislation over time is the *United States Code*. The *U.S. Code* is a codification system maintained by the Office of Law Revision Counsel (OLRC) of the House of Representatives that corresponds with the *Statutes at Large*. When Congress passes a law, it does not typically think about where and how well it will fit into sections of the *Code*. As such, the OLRC acts as a “custodian of the *Code*” in deciding where laws should go (Tress 2010). There is not a substantive difference between the *Statutes* and the *Code*; rather, the difference lies in the system by which legislation is organized. Further, most statutes are also incorporated into the *U.S. Code*, and as these statutes are repealed, amended, and updated, the *Code* is changed such that it mirrors statutory changes.⁸ The *Code* is *prima facie* evidence of laws, not legal evidence like the *Statutes* (Whisner 2009). Accordingly, if both the *Statutes* and the *Code* are presented as evidence in court, for example, the *Statutes* will prevail if the two are inconsistent with one another (Whisner 2009; Foley 2012).

The *U.S. Code* includes those laws that are “positive” and “non-positive” law. Positive law titles are “titles of the *U.S. Code* that are enacted all at once as a single statute, rather than compiled from multiple enactments (Tress 2010).” According to the OLRC website⁹, positive law titles are significant in that they represent legal evidence of the law in state and federal courts. Additionally, positive law titles are the actual federal statutes contained in the *Statutes at Large*. This contrasts with “non-positive law,” which is a collection of the *Statutes at Large* that have been edited by the OLRC and is only *prima facie* evidence of the law. Non-positive law titles encompass many statutes that have been enacted separately and have been modified by editors of the *U.S. Code*. These titles can differ from those in the *Statutes* so that they fit into the *Code* accordingly by subject area, and the changes in structure are typically technical rather than substantive. Positive law titles restate existing enacted statutes from the *Statutes at Large* that were once in one or more non-positive law titles. The OLRC website stresses that it uses the “utmost caution to ensure that the

⁸Appropriations and private laws are not included in the *U.S. Code*.

⁹<http://uscode.house.gov/codification/legislation.shtml>

restatement [of statutes] conforms to the understood policy, intent, and purpose of Congress in the original enactments” when doing this in the *Code*. So, when Congress amends a law that does not have a positive law title, it refers to the enabling legislation. If it changes something in a title that is positive law, it refers to the *U.S. Code* title and section that is being revised (Whisner 2009). Out of the 53 titles in the *Code*, there are currently 27 titles that have been completely enacted as positive (i.e., statutory) law.

So why use the *U.S. Code*? It is a more efficient and organized listing of provisions within legislation than that found in the *Statutes at Large*. The *U.S. Code* has been systematically updated every six years since 1926, with supplemental editions created in intervening years. The code is separated into 53 different substantive titles, and each encompasses the various subjects of the *Statutes at Large* that can be easily searched. While there is no methodology (that we are aware of) to reference for the various topic areas of the *Statutes*, the *U.S. Code* cites them by title and section numbers, with all titles and sections listed in each volume that is released. Each section of code concludes with the origins of the statute, the dates effective, amendments to the statute, and any other references to provisions that are related to the statute. The *Code* includes a popular name table for searching for laws with commonly known names. Especially helpful is the *Statutes at Large* table, which allows researchers to use public law numbers or statute citations to determine the law’s *U.S. Code* location.

Figure 7 shows the provision from our running example in the 2003 FAA reauthorization. It is immediately evident that the substance in the *Statutes at Large* and the *U.S. Code* match up. Both contain the program that is authorized and how much money is allocated for each year. In the *Code*, this information is delineated under the title and section designated in the *Statutes*. There is a substantive section in the *Code* that corresponds with what has been outlined in the *Statutes* and can be found using the section numbers. For instance, in our example, the title is 49 and the section is 48103, both of which are found in the *Statutes* and the *Code*. Furthermore, the *U.S. Code* citation explicitly mentions other

sections of the code that are relevant for the provision. None of these details are available in the CRS summaries or the CBO reports.

[Figure 7 about here.]

In addition to the substantive portion available in the *Code*, there are also amendment sections available at the end of each section that track the changes made to previous pieces of legislation. The amendments to the law follow the substantive sections where the amounts appropriated are outlined and the references in the text of the *Statutes* are mentioned. Sometimes, there are historical and revision notes in between the substantive and amendment portions of the *Code* that explain revised sections of the *Code* and the *Statutes* and how the two correspond. In our example below, the amendment allows us to see what provisions were being replaced for the program being authorized, as well as the dollar amounts, the years that funds were appropriated, the reference to the relevant public laws, and the *U.S. Code* citations.

[Figure 8 about here.]

Among some scholars, it seems as if the *U.S. Code* is a superlative way to conduct research in respect to studying U.S. legislation. For example, Whisner (2009, 556) believes that the *Code* is “much easier to use and deal with than the potentially dozens of volumes of *Statutes at Large* on a given topic.” More titles are being added to the *U.S. Code* as positive law, as well. According to Whisner (2009), the *Code* is moving towards including more titles in addition to the established 53 so that it is more accessible and inclusive for those trying to track and understand federal laws. There has been a gradual change from a single set of consolidated statutes into a code comprised of revisions from reenacted titles that are turned into positive law. Tress (2010) suggests that Congress would ultimately like to produce a volume of the *U.S. Code* that consists of all positive law titles, which would allow for a more resourceful way to follow legislative changes. This stems from Congress’s outgrowth of the

“all-at-once” codification format and the problems associated with it (Tress 2010, 133).

Caveats

While the *U.S. Code* certainly has its advantages, there are also aspects inherent to the codification process that have the potential to complicate things. First, amending statutory language requires very careful organization and implementation in order for codification to be successful. When a new provision is inserted into a positive law title, amendments to the law are typically noted in the appendix to the title, rather than the main body of the *Code*. This has the potential to impede the “unity” of the code language and defeat the ultimate goal of making things easier to find than in the *Statutes at Large* (Tress 2010, 152). Second, some private law and temporary legislation such as appropriations riders are not included in the *Code*. This is because they lack permanence or there is concise language that limits their existence. Again, this is a matter of judgment by those constructing the code, since those statutes considered “permanent in their nature” according to the OLRC are the ones that make it into the *Code* (Tress 2010). Finally, it is also worth mentioning that we have not confirmed with 100 percent certainty that the *U.S. Code* will contain all expiring provisions that we are trying to find. For reasons discussed above, there might be things not in the code simply because of the editorial power the OLRC has and because of the distinction between positive and non-positive law titles (and thus the inclusion and exclusion of certain portions of statutes). Also, new titles have been added over time, which could result in movement of certain statutes into different titles than they previously were in. However, these changes should be tracked in the amendments sections, provided they are positive law titles.

Data Collection

Based on the discussion above, we have developed a plan to enhance our dataset such that it includes all provisions from laws in the *U.S. Code*. The *Code* provides what seems to be the easiest and most efficient way to collect all expiring provisions. Moreover, it allows for a much more feasible way to parse the data such that we can identify these provisions.

It is important to note that we do not intend on excluding the use of the *Statutes at Large* from our larger research agenda. Rather, the *U.S. Code* provides the most systematic way to explore whether provisions (not entire statutes) are being reauthorized.

Both the OLRC and the GPO FDsys website provide the *U.S. Code* in text format. First, the OLRC has the *Code* available to the public in its most updated form online.¹⁰ All of the annual supplements are included in the main editions of the *Code* released every six years dating back to 1994. The downloadable data are available up to P.L.114-219, which was enacted in July of 2016. The *Code* is available in downloadable XML, XHTML, PCC, and PDF formats. Furthermore, the XML format provided preserves the hierarchical structure of the *U.S. Code*, which will allow for easier parsing of the data once it has been scraped. Finally, the OLRC website provides a very thorough explanation of how they have structured the downloadable documents, along with a style sheet for the XHTML format.

Second, the Government Publishing Office (GPO) also has data from 1994 onward in downloadable XML file format.¹¹ These data are identical to those provided by the OLRC. Though the data offered on the GPO website is identical to that of the OLRC, the most current version of the *Code* with supplements has not yet been added and ends in 2015. Moreover, each title is contained in each separate year of the *Code*, which could prove to be problematic when trying to employ Python to scrape the data. We are currently consulting with various people who are well versed in the *Code* about which route to take for collecting the data in bulk.

Discussion

If we are to eventually understand the causes and potential solutions for dysfunction in Congress we need additional metrics for gauging lawmaking performance. The one we have proposed here is based upon the obligations Congress has set for itself in authorization

¹⁰<http://uscode.house.gov/download/download.shtml>

¹¹<https://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>

process. While not all programs and statutes with short-term authorizations are intended to continue past their given life, the vast majority are and we need to understand the pattern of their renewal and the factors that influence Congress's ability to meet those expectations. What is more, the measure we have proposed will provide an opportunity to track lawmaking performance by issue area and committee of jurisdiction.

What is still yet unclear is whether the proposed method for extracting and parsing the expiring provisions of each law, and tracking their subsequent disposition will pan out as planned. We are in the early stages of this process, but are optimistic that the *U.S. Code* offers the greatest potential for being able to identify short-term authorizing provisions and identifying their renewal from one authorization to the next. We are receptive to any recommendations on this front that other scholars would like to offer.

Ultimately the analysis we have planned will provide a truly unique perspective on congressional productivity and governance, through a precise examination of the legislative process as it plays out over time. We expect that the resulting data set will have widespread application to an array of studies of congressional performance, and is easily linked to other existing data on political institutions and the policy process.

References

Adler, E. Scott and John D. Wilkerson. 2012. *Congress and the Politics of Problem Solving*. New York: Cambridge University Press.

Binder, Sarah. 1999. "The Dynamics of Legislative Gridlock, 1947-96." *The American Political Science Review* 93 (September): 519-533.

Binder, Sarah. 2003. *Stalemate: Causes and Consequences of Legislative Gridlock*. Washington, DC: Brookings Institution Press.

Binder, Sarah. 2014. "Polarized We Govern?" *Brookings Institution Report*.

Curry, James M. 2015. "Legislative Deadlines and Partisan Blame Politics in Congress." Paper prepared for presentation *How Congress Really Works* at University of Utah.

Fenno, Richard F. 1973. *Congressmen in Committees*. Boston: Little, Brown, and Co.

Foley, Cassandra L. 2012. *Federal Statutes: What They Are and Where to Find Them*. Congressional Research Service, RL30812.

Gerson, Jacob E. 2007. "Temporary Legislation." Public Law and Legal Theory Working Paper 130: 247-298.

Hall, Thad. 2004. *Authorizing Policy*. Columbus, OH: The Ohio State University Press.

Kingdon John W. 1995. *Agendas, Alternatives, and Public Policies*. 2nd Ed. New York: HarperCollins.

Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.

Mayhew, David R. 2005. *Divided We Govern*. New Haven, CT: Yale University Press.

Schick, Allen. 1995. *The Federal Budget: Politics, Policy, Process*. Washington, DC: Brookings Institution Press.

Sinclair, Barbara. 1997. *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*. Washington, DC: Congressional Quarterly Press.

Tollestrup, Jessica and Brian Yeh. 2014. *Authorization of Appropriations: Procedural and Legal Issues*. Congressional Research Service, R42098.

Tress, Will. 2010. "Lost Laws: What We Can't Find in the United States Code." *The University of Baltimore Legal Research Paper* No. 2010-14: 129-164.

Whisner, Mary. 2009. "The United States Code, Prima Facie Evidence, and Positive Law." *Law Library Journal* 101: 545-556.

List of Figures

1	Number of Expiring Provisions Enacted Into Law by Congressional Term of Enactment	23
2	Number of Expiring Provisions Enacted into Law by Policy Area	23
3	Example of Expiring Statutory Provisions in CBO Report on Unauthorized Appropriations and Expiring Provisions	24
4	Example of Expiring Statutory Provisions as Described by the CRS Legislative Summaries on congress.gov.	24
5	Example of Expiring Statutory Provisions in the <i>Statues at Large</i>	25
6	Example of <i>Complicated</i> Expiring Provisions in the <i>Statues at Large</i>	25
7	Example of Expiring Statutory Provisions in the <i>U.S. Code</i>	26
8	Example of Amended Expiring Statutory Provisions in the <i>U.S. Code</i>	26

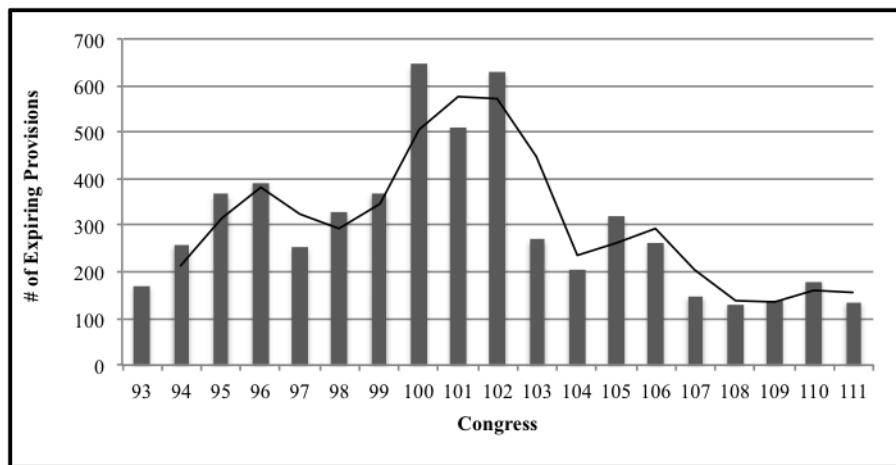


Figure 1: Number of Expiring Provisions Enacted Into Law by Congressional Term of Enactment

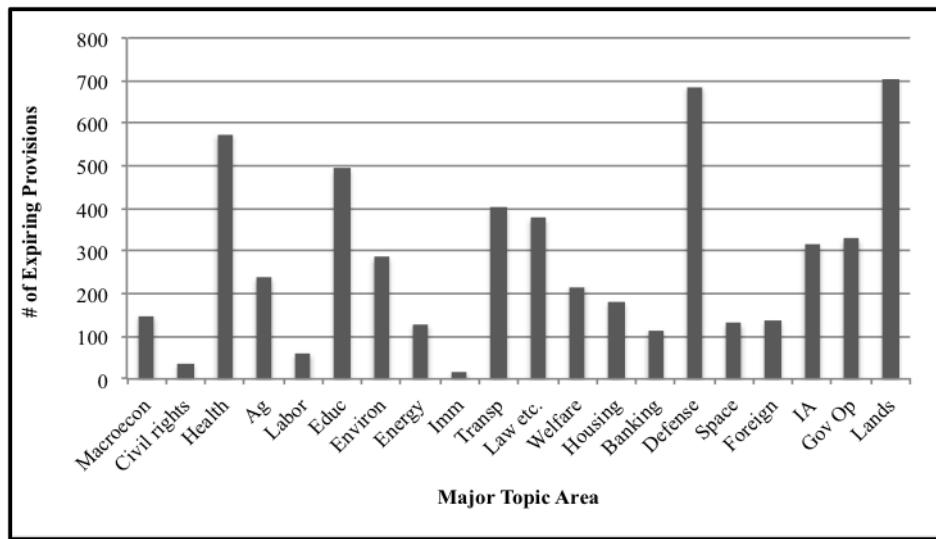


Figure 2: Number of Expiring Provisions Enacted into Law by Policy Area

P.L. 108-176	Vision 100—Century of Aviation Reauthorization Act
* Essential air service authorization (payments to air carriers)	
FY 2007 Appropriations Authorized:	77,000,000
Unauthorized FY 2008 Appropriations:	60,000,000
* Improving aviation safety, weather safety research, human factors and aeromedical research	
FY 2007 Appropriations Authorized:	120,523,000
Unauthorized FY 2008 Appropriations:	96,525,000
* Environmental Research and Development	
FY 2007 Appropriations Authorized:	30,586,000
Unauthorized FY 2008 Appropriations:	15,469,000
* Research Mission Support, Airport Cooperation Research Program, undergraduate research grants	
FY 2007 Appropriations Authorized:	19,079,000
Unauthorized FY 2008 Appropriations:	4,599,000
* Advanced Technology Development and Prototyping, Safe Flight 21, Center for Advanced Aviation System Development, Airports Technology-Safety, and Airports Technology-Efficiency	
FY 2007 Appropriations Authorized:	186,073,000
Unauthorized FY 2008 Appropriations:	158,512,000
* FAA Science and Technology Scholarship Program	
FY 2007 Appropriations Authorized:	10,000,000
Unauthorized FY 2008 Appropriations:	Not Available

Figure 3: Example of Expiring Statutory Provisions in CBO Report on Unauthorized Appropriations and Expiring Provisions

Aviation Investment and Revitalization Vision Act - **Title I: Reauthorizations; FAA Management** - (Sec. 101) Amends Federal transportation law to authorize appropriations out of the Airport and Airway Trust Fund for FY 2004 through 2006 for: (1) the Federal Aviation Administration (FAA), including the Airport Improvement Program (earmarking amounts for certain administrative-related expenses) and the Airway Facilities Improvement Program; (2) specified FAA aviation research and development (R&D), as well as engineering, projects; and (3) other specified aviation programs.

Figure 4: Example of Expiring Statutory Provisions as Described by the CRS Legislative Summaries on congress.gov.

SEC. 101. AIRPORT PLANNING AND DEVELOPMENT AND NOISE COMPATIBILITY PLANNING AND PROGRAMS.

(a) AUTHORIZATION.—Section 48103 is amended—

(1) by striking “September 30, 1998” and inserting “September 30, 2003”; and

(2) by striking paragraphs (1) through (5) and inserting the following:

“(1) \$3,400,000,000 for fiscal year 2004;

“(2) \$3,500,000,000 for fiscal year 2005;

“(3) \$3,600,000,000 for fiscal year 2006; and

“(4) \$3,700,000,000 for fiscal year 2007.”.

Figure 5: Example of Expiring Statutory Provisions in the *Statutes at Large*

“§ 47174. Authorization of appropriations

“In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), \$4,200,000 for fiscal year 2004 and for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.

Figure 6: Example of *Complicated* Expiring Provisions in the *Statutes at Large*

§48103. Airport planning and development and noise compatibility planning and programs

The total amounts which shall be available after September 30, 2003, to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505(a)(2) of this title, and carrying out noise compatibility programs under section 47504(c) of this title shall be-

- (1) \$3,400,000,000 for fiscal year 2004;
- (2) \$3,500,000,000 for fiscal year 2005;
- (3) \$3,600,000,000 for fiscal year 2006; and
- (4) \$3,700,000,000 for fiscal year 2007.

Figure 7: Example of Expiring Statutory Provisions in the *U.S. Code*

AMENDMENTS

2003-Pub. L. 108-176, §101(a)(1), substituted "September 30, 2003" for "September 30, 1998" in introductory provisions.

Pars. (1) to (5). Pub. L. 108-176, §101(a)(2), added pars. (1) to (4) and struck out former pars. (1) to (5) which read as follows:

- "(1) \$2,410,000,000 for fiscal year 1999;
- "(2) \$2,475,000,000 for fiscal year 2000;
- "(3) \$3,200,000,000 for fiscal year 2001;
- "(4) \$3,300,000,000 for fiscal year 2002; and
- "(5) \$3,400,000,000 for fiscal year 2003."

Figure 8: Example of Amended Expiring Statutory Provisions in the *U.S. Code*